

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), through its undersigned counsel and pursuant to Section 1.429 of the Federal Communications Commission’s (“Commission”) Rules,¹ hereby submits its reply to the oppositions filed by BellSouth Corporation,² SBC,³ Verizon,⁴ (collectively “BOCs”) and Tellabs⁵ to McLeodUSA’s petition for reconsideration of the *FTTC Order*.⁶

¹ 47 C.F.R. §1.429.

² Opposition of BellSouth to Petitions for Reconsideration of Covad, et al. and McLeodUSA, CC Docket No. 01-338 (filed June 30, 2005) (“BellSouth”).

³ Opposition of SBC to Petitions for Reconsideration and/or Clarification of Order on Reconsideration, CC Docket No. 01-338 (filed June 30, 2005) (“SBC”).

⁴ Opposition of Verizon to the Petitions for Reconsideration and/or Clarification of Order on Reconsideration, CC Docket No. 01-338 (filed June 30, 2005) (“Verizon”).

⁵ Tellabs, Inc. Opposition to Petition for Reconsideration, CC Docket No. 01-338 (filed June 30, 2005) (“Tellabs”).

⁶ Petition for Reconsideration, WC Docket No. 04-313, CC Docket No. 01-338 (filed January 28, 2005).

I. The Commission Should Reconsider Its FTTC Unbundling Framework

In its petition for reconsideration, McLeodUSA requests that the Commission rescind its decision in the *FTTC Order*⁷ to afford FTTC the same unbundling relief as FTTH because ILECs enjoy a number of very significant advantages in constructing fiber loops including the ability to use existing infrastructure such as wire centers and remote terminals as well as access to rights-of-way. In particular, McLeodUSA notes that CLECs do not have the ability to reuse the last 500 feet of copper in constructing FTTC.

In response, BOCs and Tellabs do no more than offer unpersuasive statements that the Commission has already considered and rejected claims that CLECs are impaired without access to FTTC.⁸ BOCs and Tellabs ignore the fact that the ability of ILECs to reuse copper in the last 500 feet with essentially no additional expense is a huge factual difference between FTTC and FTTH that the *FTTC Order* utterly failed to consider. Indeed, the Commission failed to provide any analysis of this circumstance. The statement in footnote 46, that in some cases ILECs might not reuse copper, is specious because it is implausible that BOCs would install new copper instead of new fiber in the unlikely circumstance that existing copper could not be reused. Indeed, the whole point of FTTC is that it is more economical than, while allegedly providing comparable performance to, FTTH. Therefore, it is clear that BOCs installing FTTC will reuse the last 500 feet of copper loops, or if they are unable to do so, will install FTTH. BellSouth's failure to state that it does not reuse the last 500 feet of existing copper is a clear admission that it

⁷ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Order on Reconsideration*, 19 FCC Rcd 20293, ¶ 12 (2004) ("*FTTC Order*").

⁸ SBC at 4; BellSouth at 2-3, Tellabs at 4-5.

does. The ability to reuse copper gives ILECs an overwhelming advantage in constructing FTTC.

SBC's claim that access to remote terminals eliminates any impairment caused by BOCs' ability in FTTC deployment to reuse the last 500 feet of copper belies common sense. The remote terminals that BOCs would install in connection with FTTC are not designed to permit access by CLECs. The Commission did not conclude, and there is no information on the record that would permit it to conclude, that these pedestals could provide competitive access to CLECs. Further, BOCs would resist any effort by CLECs to access these pedestals, as SBC's resistance to any access to remote terminals in connection with Project Pronto all too readily demonstrates.⁹ Equally important, it is not practically or economically feasible for CLECs to extend fiber to access thousands of remote terminals. Further, although competitive carriers face a limited number of entry barriers that may be similar to incumbents, such as developing deployment plans and implementing construction programs,¹⁰ competitive carriers as noted also encounter significant additional barriers because they are not able to utilize existing infrastructure and do not already have the right to install facilities in public rights-of-way. The Commission has determined that impairment exists for copper loops.¹¹ The FCC should not now

⁹ *In the Matter of Ameritech Corp. Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, Second Memorandum Opinion and Order, 15 FCC Rcd 17521, ¶¶ 33, 37 (2000).

¹⁰ BellSouth Opposition at 2.

¹¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 275-277 (2003) ("Triennial Review Order").

adopt FTTC based on the unsupportable presumption that competitive carriers could build copper loops in order to provide FTTC.

Accordingly, the Commission's decision that CLECs face the same obstacles in constructing FTTC as ILECs was arbitrary and capricious. On reconsideration, the Commission should rescind its determination to accord FTTC the same unbundling relief as FTTH.

II. The Commission Should Reconsider Its Determination Concerning TDM Capability

In its petition for reconsideration, McLeodUSA also requests that the Commission rescind its determinations in the *FTTC Order* that ILECs are not required to add TDM capabilities to new or existing packetized "networks."¹² McLeodUSA points out that unbundling obligations apply to "network elements" and expressed concern that BOCs would attempt to deny unbundled access to specific network elements based on vague and generalized contentions that they have installed packet based "networks." The Reply comments clearly validate these as legitimate concerns.

In response, BOCs, provide sweeping statements that they have no unbundling obligations with respect to "next generation" networks and to IP-enabled fiber and hybrid loops deep in the network,¹³ thereby confirming the very point made by McLeodUSA: BOCs will seek to exploit this ambiguity to circumvent all unbundling obligations. BOCs, therefore, continue to seek essentially complete immunity from unbundling even though ILECs deploy one network that has both a packetized and TDM capability as evidenced by the fact that fiber is used to provide both TDM and packetized services. Accordingly, the Commission should determine on reconsideration that unbundling relief for packetized capability applies only to

¹² *FTTC Order*, para. 20.

¹³ SBC Opposition at 9; BellSouth at 8; Verizon at 3.

specific packet electronics that can be associated with fiber and copper transmission media and that ILECs have a continuing and permanent obligation to provide unbundled access to TDM capable fiber and copper transmission facilities.¹⁴ The Commission should also reiterate that ILECs must continue to provide unbundled access to network elements to serve enterprise customers regardless of technology¹⁵ and that an incumbent may not “engineer the transmission capabilities of its network in a manner” that would “disrupt or degrade access to” the TDM capabilities of hybrid loops.¹⁶

In its petition, McLeodUSA also requests that the Commission rescind its determination that ILECs are not required to provide unbundled access to FTTH and FTTC even if the ILEC performs a TDM conversion at the customer premises. McLeodUSA is concerned that BOCs would perform the conversion within the network, while nonetheless declining to provide unbundled access to the TDM capability of the loop.

McLeodUSA is pleased that BellSouth agrees that any TDM conversion must be performed at the customer’s premises in order to obtain unbundling relief.¹⁷ However, other BOCs do not aver that they are entitled under the *FTTC Order* to unbundling relief only if they

¹⁴ Indeed, for years the RBOCs advocated to the FCC that there were two separate networks – a voice network and a data network. Now that the FCC has seen fit to eliminate unbundling obligations for the data elements of what the RBOCs claimed was a separate “data network,” the reply comments make it clear the RBOCs now contend that there is but one network, to which CLECs should not have access.

¹⁵ “DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops, e.g. two-wire and four-wire HDSL or SHDSL, fiber optics, or radio, used by the incumbent LEC to provision such loops and regardless of the customer for which the requesting carrier will serve unless otherwise specifically indicated. ... The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.” *Triennial Review Order*, para. 956.

¹⁶ *Triennial Review Order*, para. ¶ 294.

¹⁷ BellSouth Opposition at 8.

make the TDM conversion at the customer's premises. Therefore, it is quite possible that BOCs may intend to make this conversion at a remote terminal or at the end office, for example.

Further, there is no merit to BOC arguments that rescinding unbundling relief where a TDM capability is provided to the customer would require customers to forego the benefits of advanced services or to install new equipment that did not require a TDM interface. This argument is nonsensical because if the customer is keeping its TDM equipment that it is already using, the customer obviously is not obtaining any advanced services that could uniquely be provided by fiber. Therefore, a TDM hand-off does not promote provision of so called packetized advanced services. Accordingly, for all the reasons stated in McLeodUSA's petition, the Commission should require unbundled access to fiber loops whenever a TDM interface or conversion is provided to the customer. This is the only approach consistent with the Commission's determination that ILECs must provide unbundled access to TDM capability.

III. CONCLUSION

For the foregoing reasons, McLeodUSA respectfully requests that the Commission grant its petition for reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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